

(2006) 06 KL CK 0036
In the High Court Of Kerala
Case No : Writ Petition (C) 24784 of 2003

M. Mohan

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 12-06-2006

Acts Referred:

Citation : (2006) 2 KLJ 892 : (2006) 3 KLT 537

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : P. Chandrasekhar and P.P. Jnanasekharan, for the Appellant; T.R. Ravi, Shakeela (GP), S. Prasanth (Addl.CGSC) and Molly Jacob (CGC), for the Respondent

Judgement

Kurian Joseph, J.—Whether the petitioner is entitled to count his aided college service for the purpose of counting the length of service as teacher, in the matter of appointment as Principal under the Director of Collegiate Education is the question to be considered in this case. Petitioner was originally appointed in the aided college as Lecturer on 25-8-1976. Being a member of the scheduled caste, in the special recruitment for appointment to the post of Professor Grade II petitioner was advised by the Public Service Commission on 19-3-1985 and he was appointed as such with effect from 15-6-1985. It is admitted in the counter affidavit that the service of the petitioner under the aided college prior to his appointment as Professor Grade II has been counted for the purpose of seniority. Thus the petitioner who, entered service as advice dated 19-3-1985 of the Public Service Commission has got his seniority just below T.U. John who was advised by the Public Service Commission on 11-8-1972. Thus he has an advantage of 12 years and 9 months by way of refixing his seniority. Besides he was placed in the Selection Grade on 24-8-1992 reckoning his previous private college service in addition to his service in the Government colleges. His private college service was reckoned for calculating the qualifying service for replacement in the selection grade." However, in the matter of appointment as Principal, the contention is that the same is to be determined by the length of actual service in

the Government colleges. The special Rules for the Kerala Collegiate Education Rules 1994 provides for the service conditions of the teachers under the department. For appointment to the post of Principal the rule as it originally stood prior to the amendment dated 6-8-1994 prescribed that the teachers who have completed a minimum of 20 years of service in the collegiate education service are eligible. That has been amended and the rule as it stands now prescribed that the teachers should have completed "a minimum period of 25 years of service in the collegiate education department."

2. The amendment introduced to the Rules has been given retrospective effect from 13-3-1990. In the explanatory note it is stated that the Government actually intended to prescribe a minimum period of 25 years of service in the teaching post. The explanation reads as follows:-

As per G.O.(P)41/94/H.Edn. Dated 21-3-1994, the Special Rules for the Collegiate Education Service was issued. Government have since decided that the minimum period of 20 years of service prescribed in these rules for promotion to the post of Deputy Director may be omitted, and instead a minimum period of 25 years of service in the teaching posts may be prescribed for appointment to the post of Principal as in existence before the issuance of these rules. In the case of Lecturer (Non UGC) Scheme when placed in the U.G.C. Scheme, their further placement as Lecturer (Senior Scale), and Lecturer (Selection Grade) shall be based on their length of service in the teaching posts. It was also decided that the candidates with MA (Special) in a particular subject alone will be recruited when the requirement is for a Lecturer in that particular subject. Exemption from possessing 55% marks at Post Graduate level for those already appointed before 19-9-1991 and exemption from passing national Eligibility Test for those who have submitted their Ph.D. Thesis till 31-12-1993 and those who have done M.Phil Course till 31-12-1992 is now in existence and Government propose to give statutory validity to those concessions.

Thus it is fairly clear that the purpose of amendment was to prescribe a minimum service of 25 years in the teaching post, in the place of 20 years. As already noted above, the service of the petitioner in the aided college has been counted as qualifying service for the purpose of seniority, fixation and placement in the U.G.C. Scheme. For the only reason that the Rule prescribed 25 years of service in the Collegiate Education Department, his service as teacher with effect from 25-8-1976 is not counted. The purpose of the amendment to the Rules was to prescribe 25 years of teaching experience. Therefore, the rule has to be read down and interpreted as 25 years of service as teacher, which service has been counted for the purpose of seniority, fixation and placement in the UGC scheme. Petitioner has a dispute on the seniority over the 4th respondent. It is submitted that the 4th respondent has already retired from service. If it is a mistake while drafting the counter affidavit it is inconsequential in view of Ext. P16. Be that as it may, in view of the declaration as above, there will be a direction to respondents 1 and 2 to take appropriate action forthwith in the case of the

petitioner while considering the claim for promotion as Principal. The claim for consequential benefits atleast notional benefits will also be considered by the Government. The needful shall be done within a period of two months from the date of production of a copy of this judgment by this petitioner.

The writ petition is disposed of as above.